



Suggested Topics for Review and Consideration by the TDLR Industrialized Housing Council

BACKGROUND:

The Texas Manufactured Housing Association represents both the HUD Code manufactured home industry as well as the residential modular home industry.

Typically, the modular home industry represents a fraction of the HUD code industry. However, the prevalence of modular home construction is increasing (relative to the home construction industry as a whole).

The growth of this industry segment is attributed to the following factors:

- Design and technology improvements
- Lack of placement discrimination, particularly within city limits
- “Green home” efficiencies and the energy-efficient movement
- Disaster housing experience
- Loan appraisals on par with site built homes
- Affordable, cost-saving appeal to customers when compared to other housing options

TMHA formed a dedicated modular housing Task Force and facilitated specific discussions during our Executive Board and Board of Director meetings. Through this process, TMHA identified specific areas in rule and law where greater clarity and potential cost-saving efficiency could be found. The industry recognizes the differences between site-built and modular housing. However, the industry has concerns regarding certain developments deemed competitive disadvantages for not only cost, but compliance discrepancies. THMA will continue to work diligently with the Council, regulators and the legislature to arrive at common sense solutions to further our goal of providing safe, affordable, quality housing to the modular homeowners of Texas.

IN THIS DOCUMENT:

This document is broken into two sections. The first section identifies areas the industry believes clarification from the Council would aide not only the industry, but also the consumers we serve and the IHB Division of TDLR.

The items below have been compiled from industry representatives based on prior experiences and/or by making comparisons to common practices of similar industries. Many of the recommendations for review are in the form of questions. While the industry has its particular views as to some of the answers, we offer these questions in an effort to create a discussion so the Council may choose to seek input from any available resources as it sees fit.

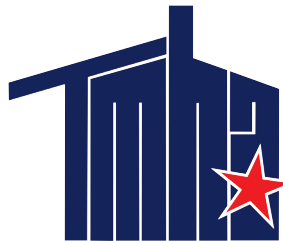


If the Council prefers to have the industry make specific recommendations regarding the questions below, we will provide such suggestions.

SECTION 1: TOPICS FOR COUNCIL CONSIDERATION

TMHA requests the Council members' consideration on the following:

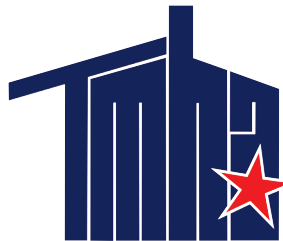
1. Is there a warranty requirement for manufacturers or builders of modular homes?
 - If so, how long does the warranty obligation run?
2. If there is not a warranty requirement, then when does the liability of the manufacturer expire?
3. Does the liability of the manufacturer extend to subsequent homeowners who have no direct contractual privity with the original manufacturer?
 - If so, how many subsequent buyers?
 - If so, what is the legal basis for this continued obligation?
4. What actions taken by a consumer would negate, nullify, or mitigate the manufacturers' warranty (if not warranty, then liability) obligations?
 - If yes, is it necessary to disclose to a consumer before purchase these limitations?
 - If a disclosure is necessary, should it be on a Council/Commission promulgated form?
5. Is the manufacturer responsible for a home after a homeowner modifies or attaches additional structures?
 - If so, to what extent?
 - Damage to the home?
 - Damage to the additional attached structure?
 - If so, can a manufacturer eliminate this responsibility with a consumer disclosure?
 - If so, should this disclosure be on a Council/Commission promulgated form or defined in statute?
6. Is it department practice to notify the industrialized builder or the manufacturer when a state inspection is requested or a consumer complaint is filed?
 - If not, should such a procedure be adopted?
7. Is it department practice to notify and allow the industrialized builder or manufacturer to attend the department inspection of homes?
 - If not, should such a procedure be adopted?
8. What is the department's procedure when a complaint is filed on a home, but the department has been notified the home in question is the subject of pending litigation? In these instances the manufacturer or industrialized builder is forced to suspend their installation efforts leaving the home incomplete, and without a final third-party inspection.
 - Should the department similarly suspend any department inspection and/or enforcement action until the home installation is completed following the outcome of the litigation?
 - If not, what is the rationale in inspecting a home that is admittedly incomplete, but similarly legally prohibited due to pending litigation from being completed?
9. When enforcement action is taken against a manufacturer or industrialized builder and the enforcement



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is based on a department home inspection and violation report that asserts the home violates specifically cited building codes, does the compliance and/or enforcement division(s) verify the code citations being asserted?

- If not, should such a procedure be implemented to ensure violations are proper, clearly verifiable and appropriate code references are accurate?
10. What is the result when the department is notified or learns on its own accord specific code citations made in the department inspection and/or violation reports are mistaken or found to include unverifiable or subjective items or comments?
 - Are those specific violations automatically dismissed?
 - If not, is there a requirement to review the report and provide corrected and accurate citation to applicable code?
 - If it is subsequently discovered a correct and accurate citation cannot be attributed to a violation, is the violation automatically dismissed?
 - If not, what is the rationale for sustaining a violation that cannot be clearly and specifically cited by correctly interpreted building codes?
 11. Should there be a definition in rule or statute as to what constitutes “normal wear and tear”?
 12. Should there be a definition in rule or statute as to what constitutes “cosmetic”?
 13. Should there be a definition in rule or statute as to what constitutes “home owner inflicted damage”?
 14. Should a manufacturer or industrialized builder bare any responsibility for items associated as “normal wear and tear”, “cosmetic” or “home owner inflicted damage”?
 - If so, to what extent does this responsibility extend?
 15. Following a home’s proper initial installation, what is the manufacturers’, industrialized builder’s and homeowner’s responsibility regarding future maintenance required due to soil erosion, foundation movement or settlement?
 - Should these responsibilities be clearly defined in pre-contract consumer disclosures?
 - If so, should these disclosures be on Council/Commission promulgated forms or defined in statute?
 16. Does the Council believe the department’s inspection and oversight authority is prescriptive in nature as outlined in code or performance based (like the old TRCC program).
 - If performance based, by what criteria and authority is this standard set?
 - If prescriptive in nature, will the department no longer cite violations that are not clearly and explicitly stated in the adopted code?
 17. Does the department allow, before moving forward with any enforcement action, an industrialized builder or manufacturer an opportunity to cure deficient items following a final third-party inspection?
 18. Does the department allow subjective opinions to be the basis for violations?
 - If so, what is the rationale for allowing subjective opinions to be the basis for violations?
 - If so, how would the Council propose a manufacturer and/or industrialized builder educate themselves such that they avoid violations that are based on subjective opinions?
 19. Does the Council have a procedure to address when a third-party professional engineer disagrees with a



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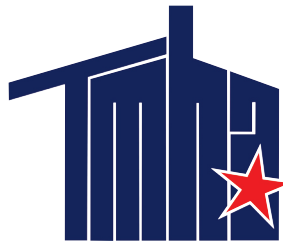
violation assigned by a department employee who is not a professional engineer?

20. Does the Council believe a department inspector (non-professional engineer) has the authority to overrule or disregard the opinions or assertions made by a licensed professional engineer?
- If so, what is the rationale for this position?

SECTION 2: SUGGESTED IMPROVEMENTS RELATED TO CURRENT PRACTICES:

The suggestions below are offered to the Council for consideration in an effort to improve efficiency, streamline administrative rules, and reduce unnecessary costs allowing the savings to be passed on to consumers.

1. TMHA recommends the Council review the legality of some of the “Technical Bulletins” the department has issued. “Technical Bulletins” or “standards of procedure” that carry the force and effect of formal administrative rules, but have not been adopted in the necessary formal administrative rule process have been deemed illegal and unenforceable in other agencies. The concern are those IHB “Technical Bulletins” which impose specific compliance requirements that are not found in statute or administrative rule, but violations of the “Technical Bulletins” carry the same enforcement weight and effect as if they were formal rules. (See DM 98-092 <https://www.oag.state.tx.us/opinions/opinions/48morales/lo/1998/pdf/lo1998092.pdf>)
 - For Council’s reference, two “Technical Bulletins” specifically questioned are:
 - IHB TB 10-03 – Concrete Acceptance for Foundations: Requires specific requirements on concrete “trip tickets,” mandatory processes, timing, violations and additional responsibilities/duties on the IHB builder not contained in administrative rule or law.
 - IHB TB 10-01 – Foundations on Expansive Soils – Residential: Requires specific action, parameters, measurements and responsibilities not found in administrative rule or law.
2. TMHA recommends a formal coordination with the Texas Department of Insurance on costal home construction requirements, along with a singular inspection process that will serve both IHB and TDI inspection requirements.
 - Currently, the conflict between TDI and the IHB results in double or triple inspections of the homes at the factory for windstorm certification. TDI will not accept the IHB process of design and certification. This means a second inspector working for an engineer is in the plant doing the same inspection that should be done by the defined third-party inspection company. On windstorm homes, this adds \$300 to \$600 to the cost of a home, as well as potential costly corrections due to the different standards and requirements of IHB and TDI.
3. TMHA recommends the Council institute a specific timeline requirement for all inspection reports delivered to the builder. Currently, several months, and in one case as long as three years, pass between the TDLR inspection and the builder receiving the report. The passage of time exposes additional variables such as weather and/or further actions taken by others relative to the home in question. TMHA recommends the Council institute a 30 day requirement from the time an inspection report is completed



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to when the builder and/or manufacturer receives the report.

4. TMHA recommends the Council consider developing an Alternative Dispute Resolution process. The process would serve as an initial informal dispute resolution process on potential violations and consumer complaints to determine if a proper remedy can be achieved to the satisfaction of all parties, prior to initiating the formal enforcement process.
5. TMHA recommends the formation of a specific task force to examine all current fees and compliance costs to validate the systems and costs are necessary and cost appropriate.
6. The industry expresses concerns over current requirements which add costs that can accumulate in excess of \$1,000 - \$1,500 (rural and very rural areas) and more than \$3,000 per home in coastal areas. Examples of, but not limited to, costs to review would be: trip ticket cost, site specific stair design, extent of responsibility and liability attributed to third-party inspectors, and timeliness of state audits.
7. TMHA recommends examining existing processes to determine if greater use of technology, in particular electronic communication, could provide greater efficiency and cost savings.

TMHA pledges to work diligently with the Council. We share the common goal to ensure homes and the numerous regulatory processes necessary to build, transport and install modular homes provide consumer protection, while utilizing the latest in technology, efficiency and cost-effective methods.

TMHA would like to thank the Council and the department for the time and consideration dedicated to work toward our common goal.

DJ Pendleton,
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Texas Manufactured Housing Association